



**STATE OF NEVADA**  
**COMMISSION ON ETHICS**  
<http://ethics.nv.gov>

**Wednesday, March 14, 2007**  
**9:00 a.m.**

**Boardroom of the State of Nevada Contractors' Board**  
**Meridian Gold Building**  
**9670 Gateway Drive, First Floor #100**  
**Reno, Nevada 89511**

**and via videoconference:**

**State Contractors' Board Hearing Room**  
**2310 Corporate Circle #200**  
**Henderson, Nevada 89074**

**MINUTES**

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics.  
A verbatim transcript of the open session proceedings, prepared by a certified court reporter,  
is available for inspection at the Commission offices in Carson City and Las Vegas.

Commission Members Present (in Reno):  
Jim Kosinski, Esq., Chairman; Mark Hutchison, Esq., Vice Chairman;  
Timothy Cashman; Rick Hsu, Esq.;  
Caren Jenkins, Esq.; George Keele, Esq.;

Commission Members Present (in Henderson) but not participating in  
Agenda item 3 due to their participation in the panel proceeding:  
Randall Capurro; William Flangas

Commission on Ethics Staff Present (in Reno):  
L. Patrick Hearn, Executive Director  
Adriana G. Fralick, Esq., General Counsel  
Emily H. Nunez, Office Manager  
Matt C. DiOrio, Senior Investigator

Commission on Ethics Staff Present (in Henderson):  
Tami DeVries, Research Analyst

Others Present:

For agenda item #3, RFO 06-71,  
David Stix, Jr., and his attorney Mr. Taggart;  
Witnesses: Gary Bacock and Leslieann Hayden;

For agenda item #6, RFO 07-04A,  
Kay Bennett, Trustee, Silver Springs General Improvement District;  
Keith Loomis, Counsel for Kay Bennett;

For agenda item #5, RFO 07-05A,  
Dena Hartley, Planning Commissioner, Elko County Planning Commission (via telephone)  
Kristin McQueary, Elko County D.A.'s Office for Dena Hartley (via telephone)

Other members from the public

Chairman Kosinski called the meeting to order at 9:06 a.m.

Agenda Item 1 – Open session to approve the minutes of the January 10, 2007, Subcommittee meeting

Chairman Kosinski opened the agenda item to approve the minutes of the January 10, 2007, Subcommittee meeting for the evaluation of the Executive Director. Commissioner Jenkins moved to approve the minutes. Commissioner Capurro seconded the motion. The motion was put to a vote and passed unanimously.

Agenda Item 2 – Open session to approve the minutes of the January 24, 2007, Commission meeting

Chairman Kosinski opened the agenda item. Commissioner Hutchison moved for approval of the minutes. Commissioner Cashman seconded the motion. The motion passed unanimously.

Agenda Item 3 – Request for Opinion 6-71

Open session to hear testimony, receive evidence, deliberate, and render an opinion relating to a Request for Opinion submitted pursuant to NRS 281.511(2)(b), alleging that certain conduct of David Stix, Jr., Former Mayor, City of Fernley, violated the provisions of NRS 281.481(2), NRS 281.481(7), and NRS 281.554.

Chairman Kosinski opened this agenda item and started by having Mr. Stix and the witnesses sworn in. Mr. Taggart, attorney for Mr. Stix stated that, as the City Attorney of the City of Fernley, he would be representing the mayor because he believes the action of the complaint

came against the mayor's office. The Chair then provided an overview of the hearing process, and invited Mr. Taggart to make an opening statement.

In his opening statement, Mr. Taggart stated that they support the Executive Director's finding in this matter and that they believe the activity in question did not violate any type of ethics standard. He stated that a newsletter that was put out by the City was the idea of a new city employee, Leslieann Hayden, and that the information contained in it was solely for the purpose of improving communication between the citizens of the city and City Council. He further stated that funding was approved by the City Council, the City Attorney's office had reviewed and approved the newsletter beforehand and determined that there was no problem with it.

Chairman Kosinski then began with preliminary questions and to hear testimony by Mr. Stix. Mr. Stix testified that he was very careful. One of his main concerns was to not abuse the free use of the press. He also stated that he had some discussions with Councilman Martin regarding the appearance of impropriety during the election year and, although Councilman Martin expressed concerns about the newsletter in the water and sewer bills, the motion to do so was passed unanimously at a City Council meeting in January 2006.

Following further testimony by the subject of the complaint, Mr. David Stix, Jr., the Commission called Mr. Bacock to testify followed by Leslieann Hayden.

A recess was taken at 10:30 a.m., and the hearing reconvened at 10:46 a.m.

During examination by Mr. Taggart, Ms. Hayden read into the record an e-mail she received from Justin Clouser with the City Attorney's office regarding the Mayor's message. Following Ms. Hayden's testimony, Mr. Taggart provided a closing statement.

Vice Chairman Hutchison then moved that the Nevada Commission on Ethics find a preponderance of evidence does not exist to support a violation of NRS 281.481 subsection (2) or NRS 281.481 subsection (7) or NRS 281.554, that the complaint against Mr. Stix be dismissed. Commissioner Jenkins seconded the motion. The motion was put to a vote and passed unanimously.

#### Agenda Item 4 – Open Session for discussion and possible action to evaluate the job performance of the Executive Director

Chairman Kosinski opened this agenda item, by explaining that the subcommittee who was appointed by the commission had developed a set of guidelines from the job description for the Executive Director. As a member of the subcommittee, Chairman Kosinski said that he discovered that staff had been tracking complaints that were filed and the disposition of those complaints. He also learned that Matt had been compiling a weekly update on the status of investigations. He then asked Pat Hearn, Executive Director, to provide an overview of the information before them. Matt then provided an overview of his weekly status updates on investigations.

Commissioner Cashman questioned the timeframe of 6 months to complete investigations and asked if perhaps the commission may be in need of another investigator. Commissioner Hsu questioned whether the executive director's reports were a team effort, with the executive director assisting with the investigations. Mr. Hearn confirmed that he [Matt] is primarily the investigator and Pat primarily reviews, edits and approves the report when it's done. He also stated that the investigator does get assistance from Tami, as far as obtaining documentation, telephone interviews etc. Commissioner Hsu then questioned if this is a system that works well, or if it would be more helpful for the Executive Director to be more involved with the investigations since the Executive Director is the one ultimately charged with that duty, "to investigate and come up with the just and sufficient cause recommendation."

Mr. Hearn advised the Commission that he is currently working on two investigations that he took on himself to assist the investigator due to the backlog of cases. He said that he was hopeful that one case could go to panel before his upcoming surgery and the other approximately two weeks thereafter.

Commissioner Keele recommended that perhaps the executive director, research analyst and investigator should all get together at the outset when a new complaint or request for advisory opinion is received to brainstorm. Particularly, he pointed out that materials that should have been included were missing from meeting and or panel books, including information that the executive director may not believe were necessary to include but commission members might wish to have. He believes it would always be helpful to include such materials.

Chairman Kosinski stated that he felt a quarterly evaluation of the performance of the executive director was a good idea and would help the commission and Pat to remain on the same page, working together to reach the goals of the commission. He also requested that the status of complaints and investigations reports continue to be provided to the commission as part of their monthly meetings packets. The Chair then proceeded to discuss the evaluation criteria, which was included in the position description. Chairman Jenkins clarified for the record that the Executive Director serves at the pleasure of the commission, and the criteria created for the Executive Director position is only provided as a guidance so that the Executive Director would understand what standards are expected of them. She felt that maybe some expectations were too high, and others were too low, however, if the Executive Director doesn't know what the commission expects, how can he possibly perform?

Mr. Hearn stated that he is confident in his ability to learn and grow and be able to do the job that the Commission hired him to do.

Commissioner Hutchison commented that staff has all done great work for this commission and he would be concerned if staff felt forced to leave, because any time you lose a person, you lose that work being done and it causes problems. He further stated that teambuilding is a great idea and gives each member a chance to learn different approaches and different ways of doing things.

The Commission members each expressed their appreciation for the opportunity to discuss matters and agreed that communication is the most important key for the commission to move

forward. Chairman Kosinski read the remaining criteria into the record and encouraged comments from the other commissioners.

Chairman Kosinski closed this agenda item and a recess was taken at 1:03 p.m.

#### Agenda Item 5 – Request for Opinion 07-05A

Open session pursuant to NRS 281.511(5)(c) to hear testimony, receive evidence, deliberate, and render an opinion relating to an Advisory Opinion Request submitted by Dena Hartley, Planning Commissioner, Elko County Planning Commission, pursuant to NRS 281.511(1).  
(Confidentiality waived)

Chairman Kosinski opened the agenda item, and asked Executive Director, Pat Hearn, to provide an overview of the request for opinion. Mr. Hearn stated that Ms. Hartley is one of seven Commissioners on the Elko County Planning Commission and her term expires December 31, 2007. Ms. Hartley is also a director on the Spring Creek Association Board of Directors. Ms. Hartley receives no compensation for serving on the SCA and spends about 10 hours per month on SCA business. The Spring Creek subdivision is the largest in Elko County. The Spring Creek Association is the policy maker and the appellate board for the Spring Creek Committee of Architecture. The Deputy District Attorney for the Planning Commission advised Ms. Hartley to disclose her interest in the SCA and abstain on related issues before the Commission until the Nevada Commission on Ethics has opined on her advisory opinion request. Specifically, pursuant to NRS 281.501, must Ms. Hartley abstain from voting on Spring Creek subdivision matters at the Elko County Planning Commission because of her commitment in a private capacity to the interest of others?

Ms. Hartley was sworn in and the Commission began to hear her testimony. During testimony, Ms. Hartley confirmed that when any Spring Creek Association matter comes before the Planning Commission, she continues to follow advice of counsel and abstains. She also acknowledged that being a member of the board of directors creates a fiduciary obligation for her to act in the best interests of the Spring Creek Association.

Commissioner Hutchison asked Ms. Hartley if she was aware of the NCOE's Woodbury opinion. She confirmed that she has read the opinion. Commissioner Hutchison advised her that she obviously needs to disclose that she has a relationship with the Spring Creek Association when she is a Planning Commissioner and a Spring Creek Association matter comes before her. As articulated in the Woodbury opinion, she was advised that she must disclose and abstain when Woodbury and the NCOE statute require her to do so.

Ms. Hartley stated that, as a member of a board of directors, she would never see any applications made to the Committee of Architecture until she was on the Planning Commission. So there would be no prejudgment in a case. She also testified that the board of directors oversees the operation of the Spring Creek Association. The Committee of Architecture deals with zone changes, variances, and improvements to property that get approved and then go to the

Planning Commission. Therefore, she does not believe they are dual roles until there is a dispute and it comes before the board.

Commissioner Hsu asked Ms. Hartley if, other than the Declarations of Reservations (DORs), there is a possibility that the board of directors may set some kind of policy independent of that which would be binding on the Spring Creek Association COA. He also asked Ms. Hartley if the board of directors essentially delegate the authority on matters relating to zoning and architectural review to the Committee on Architecture. Ms. Hartley stated that they do appoint the membership for the Committee of Architecture, but they don't get involved in that aspect of it unless there's been a decision appealed to the board. She also stated that they have a chairman and vice chairman just like the board and they conduct their own meetings.

After further testimony and questions by other Commissioners, Commissioner Hsu moved that the Commission on Ethics find that, based on the evidence presented under NRS 281.501 subsection (2), Ms. Harley's position as a member of the board of directors of the Spring Creek Association imposes a fiduciary duty upon Ms. Hartley which creates an impermissible conflict which would require her to abstain from participation of any matters relating to the Spring Creek Association before the Planning Commission. Commissioner Hutchison seconded the motion. The motion was put to a vote and passed unanimously.

Chairman Kosinski advised Ms. Hartley that, in the unlikely event that the DOR contains information which would tend to break the relationship between the board and the architectural committee, she is welcome to submit that to staff for review by the Commission.

Chairman Kosinski closed this agenda item, and a ten-minute recess was taken at 2:36 p.m.

#### Agenda Item 6 – Request for Opinion 07-04A

Open session pursuant to NRS 281.511(5)(c) to hear testimony, receive evidence, deliberate, and render an opinion relating to an Advisory Opinion Request submitted by Kay Bennett, Trustee, Silver Springs General Improvement District, pursuant to NRS 281.511(1). (Confidentiality waived)

Chairman Kosinski opened the agenda item, and asked Executive Director Pat Hearn to provide an overview of the request for opinion. Mr. Hearn stated that Ms. Bennett was elected as a trustee for the Silver Springs General Improvement District board in November of 2006. She was sworn in January of 2007 and attended her first board meeting on January 8<sup>th</sup> 2007. Ms. Bennett and her husband hold interests and are co-managers in the Silver Springs Airport, LLC. In 1999, the Silver Springs Airport, LLC, and the Silver Springs General Improvement District entered in to a long-term contract, referred to as "the contract," for disposal and/or other utilization of treated effluent from the Silver Springs Wastewater Reclamation Plant. Ms. Bennett and her husband produce alfalfa during the growing season and dispose of the treated effluent in the non-growing season. They dispose of approximately 150,000 gallons a day of treated effluent and have the capacity to accept up to 600,000 gallons a day. They are sole providers of this service to the SSGID.

Ms. Bennett has stated publicly that she would abstain from voting on matters concerning the contract. At the January 8<sup>th</sup> board meeting the SSGID's, the district's purported legal counsel, Kevin Walsh, challenged the legality of Ms. Bennett's participation on the board due to the perceived conflict created by the contract. In a letter to SSGID Board Chairman Bob Freeman, dated January 2, 2007, Mr. Walsh concludes that, based on NRS 318.0957, which is "trustee's interest in contracts made in official capacity prohibited," it is unlawful for Ms. Bennett to be a member of the SSGID while simultaneously maintaining her pecuniary interest resulting from the contract. Further, Mr. Walsh advised that Ms. Bennett could not vote on matters pertaining on the SSGID and the Silver Springs Airport, LLC.

Lyon County District Attorney Robert Auer's opinion is that, because Ms. Bennett was a party to the contract before she was elected to the SSGID board, she can maintain her elected position. He suggested an opinion be sought from the Nevada Commission on Ethics.

Ms. Bennett testified that she is currently the Chairman and interim manager of the Silver Springs General Improvement District. As Chairman she oversees expenditures, oversees accuracy of all deposits, develops and brings the agendas before the board, interfaces with prospective interim management, the county, District Attorney, and with members of the public. As interim manager, she handles the fiduciary aspects, interfaces with plant operators, Comptroller and staff, Human Resources Director, and members of the public. She also has some responsibility in terms of hiring and firing personnel in the capacity of interim manager.

As co-manager and owner of the Silver Springs Airport, LLC, Ms. Bennett stated that she works closely with Lyon County in the implementation of the FAA grants and other state grants, Commission on Economic Development grants, and interface with the public on a regular basis. Ms. Bennett also testified that the issue of a conflict of interest came up at a meeting and she read into the record that a) she public disclosed that she is a co-manager of the Silver Springs Airport, LLC, when matters pertaining to the LLC came before the SSGID Board and b) that she must abstain from voting on issues pertaining to the Board in matters pertaining to the effluent reuse agreement with the SSGID. She may give input and provide factual information regarding the SSALC issues but must disclose her relationship and abstain from voting. Ms. Bennett said she has made it very clear that this is how she intends to conduct herself.

Following Ms. Bennett's testimony, Chairman Kosinski clarified for Ms. Bennett that she came to the Commission for guidance on both NRS 241.0355 and NRS 281.501. 241.0355 is out of the Commissioner's jurisdiction and therefore, she was advised to rely on the District Attorney and her counsel for guidance on that issue. As to whether her situation presents a conflict under NRS 281.501, Chairman Kosinski said they would be dealing with this statute only, and as Commissioner Hutchison said, she can come back to the Commission in the future if she has any additional questions.

Commissioner Hutchison moved that Ms. Bennett must disclose her private interest in the Silver Springs Airport, LLC, whenever a matter affecting it comes before the SSGID Board. She then needs to assess whether abstention is required under NRS 281.501 and the Woodbury decision of the Commission. Where abstention is required, Ms. Bennett may still be allowed to participate

as a provider of factual information. Commissioner Keele seconded the motion. The motion was put to a vote and passed unanimously.

Chairman Kosinski closed this agenda item.

Agenda Item 7 – Open session for discussion and possible action regarding the development of new ethics training materials

Chairman Kosinski opened this agenda item to discuss ethics training information, which was brought to the attention of Mr. Hearn by Commissioner Flangas. Mr. Hearn said that NRS 281.4635(1)(e) directs the executive director conducting training upon the request of any public officer or employee. In such training, the executive director shall emphasize that he is not a member of the Commission and that only the Commission may issue opinions concerning the application of the statutory ethical standards to any given set of facts and circumstances.

Mr. Hearn also stated that NRS 281.471 refers to the duties of the Commission, which includes that the Commission shall publish a manual for the use of public officers and employees that contains hypothetical opinions which are abstracted from opinions rendered pursuant to subsection (1) of NRS 281.511 for the future guidance of all persons concerned with ethical standards in government. Mr. Hearn said that he has discussed this with staff and feels that he could prepare a draft manual to contain the statutes, hypothetical scenarios based upon opinions that have previously been rendered by the commission and that it would be written in a manner that is easy to understand.

Commissioner Hsu said that the manual could be categorized. Since disclosure and abstention is a big issue, Pat could refer to the Woodbury Opinion and include some hypothetical questions.

Commissioner Flangas directed Commission members to a letter that he wrote to Mr. Hearn on December 23, 2006. Commissioner Flangas said that, after serving seven and-a-half years on the Commission, he believes that a significant number of public officers are not familiar with disclosure and abstention, especially as many new faces enter into public office with almost every election. He strongly believes that prevention is cheaper than correction and he believes that people will do the right thing if they know what the right thing is to do. He recommends that the Commission create a videotape to explain the principal facets of ethics, and perhaps make a copy available to every county courthouse for any public official who chooses to become acquainted with the law. He further stated that he does not believe the executive director and staff are conducting the necessary level of training that is required to bring full attention to ethics.

Chairman Kosinski reminded Commissioner Flangas that all elected officers are required to sign a statement that they have read and understand the ethics laws. He does not believe that, by providing public officers a taped recording and by having them sign another statement that they have watched the video and understand the ethics laws, would result in any greater level of training. Furthermore, Chairman Kosinski stated that he personally feels that the training should be given by a live person.



Commissioner Jenkins said that the question-and-answer period is always the most helpful in any training of this sort. With a taped presentation the question-and-answer period would be nonexistent; therefore, although a taped presentation wouldn't hurt, it would not be as effective. Commissioner Flangas agreed that the executive director's utilization of PowerPoint presentations and providing for lectures, personal interaction sessions and participant question-and-answer session is the best way to go and there is no substitution for that; however, he believes that a supplement to that effort would reach more people.

Chairman Kosinski stated that at this time, he has no information that would lead him to believe that staff cannot take care of the training requirements that are placed upon them at this time. Commissioner Hutchison stated that the Commission must determine how to do it [get the training materials out], and do we have the resources to do it fairly quickly. Mr. Hearn showed the Commissioners a bookmark that Tami created which included bullet points about the Woodbury and Kubichek opinions as well as five principles of public service ethics and advised the Commission that we could have them printed and available.

Commissioner Cashman asked about the type of materials that the Commission currently has available. What type of strategic plan or training plan do we have. What is our objective, and what are we trying to accomplish. He suggested tasking Mr. Hearn with coming up with a training plan and bringing it back to the Commission. Chairman Kosinski directed Mr. Hearn to prepare a strategic plan for training and present it to the Commission at the May meeting, and that he begin to work on the training manual and report back at each subsequent monthly meeting as to his progress. Chairman Kosinski also said that, after the training manual is completed and the Commission has a better idea about the requirements and, after the legislative session, the Commission will then consider a video presentation. He then asked Mr. Hearn to bring to them, a copy of what he has put together so far, and what he has been using for training purposes. Chairman Kosinski closed this agenda item.

#### Agenda Item 8 – Open session for update by the executive director for discussion and possible action of 2007 legislative session.

Chairman Kosinski opened this agenda item. Mr. Hearn started out by praising Tami's work on following the legislative session on a daily and almost hour-by-hour basis. He then explained the status on AB 142, the requirement for mandatory training for public officers and employees within six months of being appointed or elected to office and the training for lobbyists within 30 days after registration and the registration of executive branch lobbyists.

The next item was AB 143, which was apparently introduced as a result of cases that were dismissed because of the expiration of the 45 day time limit. Mr. Hearn further stated that, the issue the bill is addressing is the policy of the Commission to provide no further information to complainants after it acknowledges receipt of a complaint. Mr. Hearn said that, as a user-friendly idea, after a panel proceeding, he will now send the requester of the complaint a letter advising them that the matter has now gone to that stage and that, if they'd like additional information, it is available on our website. Chairman Kosinski concurred with Mr. Hearn.

Finally, Mr. Hearn discussed AJR 1 regarding the “three-strikes–you-are-out” bill. After discussions by members, Tami provided information regarding BDRs that she is currently tracking since they will have some impact on this agency. Chairman Kosinski closed this agenda item.

#### Agenda Item 9 – Open session for Chairman’s comments

Chairman Kosinski opened this agenda item. He began by reminding members that the Commission is no longer accepting requests regarding NRS 281.230. Adriana Fralick, General Counsel, stated it was previously determined that the Commission only has jurisdiction from 281.411 through 281.581. She suggested that the Commission form a subcommittee to conduct an overhaul of statutes and determine what they can do to fix the chapter. Chairman Kosinski commented on considering work sessions to deal with complex legal issues, as well as when new members join the Commission.

Among other items addressed briefly, the Chair also addressed the issue of Commissioners “conflicting” out. He believes that the statute requires a more formal approach than presently occurs. He requested that, when a Commissioner chooses to conflict out on a matter, the Commissioner provide him with a letter (e-mail will suffice), indicating why the Commissioner cannot participate, what the disclosure is, that the Commissioner is going to abstain and why the abstention requirements would apply to the Commissioner. He then closed this agenda item.

#### Agenda Item 10 – Open session for public comment

Chairman Kosinski opened the agenda item for public comment. On behalf of the Commission and staff, Ms. Fralick presented a plaque to Former Chair, Commissioner Jenkins, in recognition and appreciation of serving as Chair for 18 months and thanked her for her contributions and commitment. No other public comment was made, and the agenda item was closed.

Chairman Kosinski adjourned the meeting at 4:26 p.m.

Minutes transcribed by:

Minutes approved April 11, 2007

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Emily H. Nunez, Office Manager

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Jim Kosinski, Chairman